Nova Law Review

Volume 3, *Issue* 1 1979 *Article* 7

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Abstract

In 1976 the Florida Supreme Court affirmed the decision of the Second District Court of Appeal in Hillsborough Association for Retarded Citizens, Inc. v. City of Temple Terrace,' wherein the issue was the extent to which the state or its agencies may ignore local zoning regulations in carrying out their proper functions, be they governmental or proprietary in nature.

KEYWORDS: Temple Terrace, Protecting, Municipalities

Protecting Municipalities Against Unnecessary State Infringement: The Unrealized Wake of the Municipal Home Rule Powers Act and *Temple Terrace*

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In 1976 the Florida Supreme Court affirmed the decision of the Second District Court of Appeal in *Hillsborough Association for Retarded Citizens, Inc. v. City of Temple Terrace*,[1] wherein the issue was the extent to which the state or its agencies may ignore local zoning regulations in carrying out their proper functions, be they governmental or proprietary in nature.[2] In adopting the district court's opinion as its own,[3] the Florida Supreme Court established the "balancing of interests" test as the measure for determining on a case-by-case basis whether a state agency enjoys immunity from local zoning provisions.[4] In embracing this test, the district court rejected the "superior sovereign"[5] and "power

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1. 332 So. 2d 610 (Fla. 1976), *aff'g* 322 So. 2d 571 (Fla. 2d DCA 1975) [hereinafter referred to as *Temple Terrace*].

2. A distinction between governmental and proprietary functions is frequently used by courts to determine whether a political subdivision of the state attempting to locate an institutional facility is immune from local zoning regulation. Proponents of the distinction contend that when the institutional use is "governmental" the political unit performing such a function is immune from the conflicting zoning ordinance; when the use is "proprietary," however, the zoning ordinance prevails . . . . [A] political unit performs a governmental function if it is acting pursuant to and in furtherance of obligations imposed by legislative mandate. The unit performs a proprietary function if the act is permissive in nature . . . . The classification of specific functions as governmental or proprietary varies from jurisdiction to jurisdiction.

Note, *Governmental Immunity From Local Zoning Ordinances*, 84 HARV. L. REV. 869, 869-70 (1971) (footnotes in the original are omitted). This governmental/proprietary function distinction was essentially rejected by the district court in *Temple Terrace*. 322 So. 2d at 577-78.

3. 332 So. 2d at 612.

4. *See* 322 So. 2d at 578-79.

5. 322 So. 2d at 576-77. Under this test, "where immunity from a local zoning oridnance is claimed by an agency occupying a superior position in the governmental

of eminent domain"[6] tests as well as the "governmental/proprietary" theory.[7] In addition, the court noted that the "statutory guidance" test was still valid but inoperative in *Temple Terrace* because there was no applicable legislation to consult.[8] In addition to establishing the balancing of interests test for judicial use in settling inter-governmental zoning squabbles, the district court[9] and the supreme court[10] clearly placed on the state the burden of seeking compromise with local authorities.[11]

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hierarchy, it is presumed that immunity was intended in the absence of express statutory language to the contrary." *Id.* at 574.

6. *Id.* at 578. "Where the power of eminent domain has been granted to the governmental unit seeking immunity from local zoning, some courts have concluded that this conclusively demonstrates the unit's superiority where its proposed use conflicts with zoning regulation." *Id.* at 574.

7. *See* note 2 *supra.*

8. *Id.* at 578. "While we acknowledge that a specific legislative statement on the subject would control, in the absence of such a statement we must look to other criteria in order to reach a decision." *Id.*

9. [T]he governmental unit seeking to use land contrary to applicable zoning regulations should have the burden of proving that the public interests favoring the proposed use outweigh those mitigating against a use not sanctioned by the zoning regulations of the host government.

. . . [U]nder normal circumstances one would expect the agency to first approach the appropriate governing body with a view toward seeking a change in the applicable zoning or otherwise obtaining the proper approvals necessary to permit the proposed use.

Id. at 579.

10. We conceive that the effect of our decision will be that the state will always cooperate with local government when it has decided to achieve an objective by means of a non-conforming use . . . . [L]ocal administrative proceedings will provide the forum in which the competing interests of governmental bodies are weighed.

332 So. 2d at 613.

Petitioner has raised here its concern that local governments will be able to thwart state policy by refusing to approve zoning for legislative projects. The courts are available, however, to review the balance struck in administrative proceedings. Beyond that, . . . the State of Florida possesses the power to exempt itself from local zoning ordinances.

Id. n.5.

11. For general discussion of *Temple Terrace*, *see* Note, *State Immunity From Zoning: A Question of Reasonableness*, 31 U. MIAMI L. REV. 191 (1976), and Commentary, *Immunity of State and State Related Activities from Local Municipal Zoning Regulations: Florida Focus*, 28 U. FLA. L. REV. 800 (1976).

The balancing of interests test was probably first fully proposed, though not so-named, in a Note which appeared in the Harvard Law Review in 1971. Note, *Governmental Immunity From Local Zoning Ordinances*, 84 HARV. L. REV. 869, 883

The purpose of this brief article is to explore the possibility of the extension of the holding of *Temple Terrace* beyond inter-governmental zoning disputes to state/local conflicts in other areas of municipal concern.

1. CASE IN POINT: THE BOCA BANYAN TREE

In 1978, the City of Boca Raton filed a complaint in Palm Beach County Circuit Court against a construction company and the State of Florida's Department of Transportation (F.D.O.T.).[12] The complaint sought to enjoin the defendants from destroying a banyan tree located within the right-of-way for improvements to a street without first applying for and obtaining from the city a tree removal permit pursuant to a city ordinance.[13] Essentially, the ordinance provided that no tree could be removed by any person without first obtaining a city permit and also set forth certain conditions which must exist for a removal permit to issue.[14] Public rights-of-way were specifically included within the pur-

(1971). Since that time, a number of jurisdictions have embraced this test to resolve inter-governmental zoning disputes involving various levels of government. *See, e.g.*, City of Newark v. University of Delaware, 304 A. 2d 347 (Del. Ct. Ch. 1973), Kunimoto v. Kawakami, 56 Haw. 582, 545 P. 2d 684 (1976), Brown v. Kansas Forestry, Fish & Game Comm'n, 2 Kan. App. 2d 102, 576 P. 2d 230 (Ct. App. 1978), Town of Oronoco v. City of Rochester, 293 Minn. 468, 197 N.W. 2d 426 (1972), Rutgers, State University v. Piluso, 60 N.J. 142, 286 A.2d 697 (1972), Lincoln County v. Johnson, 257 N.W. 2d 453 (S.D. 1977). Additionally, Florida courts before *Temple Terrace*, were using a balancing test to resolve zoning conflicts between governments. *See, e.g.*, State *ex rel.* Helseth v. Du Bose, 99 Fla. 812, 128 So. 4 (1930), and Palm Beach County v. Town of Palm Beach, 310 So. 2d 384 (Fla. 4th DCA 1975).

Interestingly, in *Lincoln County v. Johnson, supra,* while the court applied the balancing of interests test in deciding when a city was required to seek county approval for locating a sanitary landfill in the county on property owned by the city outside the city limits, it also pointed out the possibility that:

> State agencies such as public utility commissions or state highway authorities have a political jurisdiction and a concomitant planning responsibility statewide in scope transcending local boundaries. To be compelled to comply with local zoning regulations might well thwart the state agency's attempt to perform its public service function.

257 N.W. 2d 453, 457.

12. City of Boca Raton v. Crabtree Constr. Co., No. 78-1035 CA (Fla. 15th Cir. Ct., filed March 21, 1978).

13. *See generally,* BOCA RATON, FLA., CODE ch. 21A (1978).

14. *Id.* § 21A-12.

view of the ordinance.[15] In this case, circumstances were such that the mandatory conditions were partially satisfied and the city was willing to issue the removal permit if the defendants were willing to comply with a permissive condition under the ordinance that the tree in question be relocated or that trees and landscaping of equal value be placed in the near vicinity.[16] Defendants refused.

In its memorandum in support of its request for permanent injunction, the city argued by analogy to *Temple Terrace* that the balancing of interests test requires state agencies to apply for appropriate municipal permits and to cooperate with local governments in any instance where proposed state action would conflict with municipal ordinances.[17] In granting defendant F.D.O.T.'s Motion to Dismiss,[18] the circuit court found that *Temple Terrace* was "limited in impact of decision to zoning matters only"[19] and in effect decided the case on the basis of a superior sovereign test, finding no statutory waiver of the sovereign immunity of the F.D.O.T. as an agency of the state.[20]

If the City of Boca Raton had appealed the banyan tree case,[21] it

15. *Id.* § 21A-25.

16. Memorandum in Support of Plaintiff's Request for Permanent Injunction at 6, City of Boca Raton v. Crabtree Constr. Co., No. 78-1035 CA (Fla. 15th Cir. Ct. 1978).

17. *Id.* at 4-6. The city recognized that this contention assumes that the source of authority for the questioned municipal regulation probably must be Article VIII, Section 2(b) of the Florida Constitution, in light of the supreme court's decision in Dickinson v. City of Tallahassee, 325 So. 2d 1 (Fla. 1975), upholding state immunity from municipal taxation. *See* text accompanying notes 23-24 and 31-35 *infra.* It must also be noted that the city was not contending that it had the power to pass ordinances in conflict with state *law. See* City of Miami Beach v. Fleetwood Hotel, Inc., 261 So. 2d 801, 806 (Fla. 1972). Instead, the city was attacking state *action* contrary to municipal ordinance, which action was not specifically protected from municipal control by state statute, the state constitution, or the general concept of sovereign immunity. *See* text accompanying notes 31-35 *infra.*

18. F.D.O.T. responded to the city's complaint with a motion to dismiss on various grounds. The road contractor, Crabtree Construction Company, filed a cross-claim against F.D.O.T. and a counter-claim against the city. The dismissal was with prejudice as the city stated at the hearing that it had nothing further to plead. The dismissal operated in favor of Crabtree as it was acting as an agent of F.D.O.T.

19. City of Boca Raton v. Crabtree Constr. Co., No. 78-1035 CA (Fla. 15th Cir. Ct., April 4, 1978).

20. *Id.*

21. The road project was delayed by other causes and, accordingly, the threat to the banyan tree was removed. The remaining pleadings were dismissed by the parties with stipulations that would permit the banyan tree to be removed when required and

might have participated in some important law-making. It is the thesis of this article that the position taken by the City of Boca Raton advocating the extension of the *Temple Terrace* rule beyond zoning matters was well-founded and supportable by significant state constitutional and legislative predicate.[22]

2. CONSTITUTIONAL BASIS FOR THE EXTENSION OF THE *TEMPLE TERRACE* RULE: ARTICLE VIII, SECTION 2(b)

In its review of the district court's decision in *Temple Terrace*, the Florida Supreme Court was careful to distinguish that case from the case of *Dickinson v. City of Tallahassee*,[23] decided by the supreme court after the district court issued its opinion in *Temple Terrace:*

> In *Dickinson* we held that the state was immune from a municipal utility tax, in part because Article VII, Section 9(a) of the Florida Constitution did not expressly waive the state's sovereign immunity from taxation and in part because the applicable statute did not expressly confer on municipalities the power to impose a utility tax on the state. Sovereign immunity is no guide here as we deal with a zoning power of municipalities which is derived from Article VIII, § 2(b) of the Florida Constitution . . . .[24]

From this language it is arguable that the supreme court should be willing to favorably consider the application of the balancing of interests test to state/local disputes regarding a municipality's exercise of any power having the same constitutional lineage as municipal zoning powers, assuming no applicable legislation preserving sovereign immunity (thus necessitating the use of the statutory guidance test rather than the balancing of interests test).[25] What is the basis for the special significance attached by the supreme court to Florida municipalities' Article VIII, Section 2(b) powers?

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the city to demand and enforce relocation or replacement landscaping. Interview with Robert A. Eisen, Assistant City Attorney for the City of Boca Raton, Florida, in Boca Raton (November 1, 1978).

22. To date, there is no case law, in Florida or elsewhere, concerning the extension of the balancing of interests test to state/local conflicts outside the area of zoning.

23. 325 So. 2d 1 (Fla. 1975).

24. 332 So. 2d at 612.

25. *See* note 8 *supra.*

A. The 1968 Revision of the Florida Constitution: Home Rule

With respect to the existence and powers of municipalities, the 1885 Florida Constitution, as amended through 1967, provided in pertinent part:

> The Legislature shall have power to establish, and to abolish, municipalities to provide for their government, to prescribe their jurisdiction and powers, and to alter or amend the same at any time.[26]

With the 1968 revision of the Florida Constitution came the following replacement provisions in Article VIII, Section 2, regarding municipalities:

> (a) ESTABLISHMENT. Municipalities may be established or abolished and their charters amended pursuant to general or special law . . . .
>
> (b) POWERS. Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise *any* power for municipal purposes *except* as otherwise provided by law.[27]

The new Article VIII provision was apparently proposed for the purpose of granting "home rule" powers to Florida municipalities.[28] In the past municipalities had been constitutionally reliant on the legislature to *grant* municipal powers by general or special law, but now it appeared cities could exercise *any* power assuming a municipal purpose for such exercises and no state legislation to the contrary.[29] The realiza-

26. Art. VIII, § 8, FLA. CONST. (1885). This section also provided that if a municipality were abolished, provision must be made for the protection of its creditors.

27. (Emphasis added.) This revised section also retained the "protection of creditors" provision of the former constitution and added the provision that municipal legislative bodies be elected.

28. It was not generally conceded that the new Article VIII would accomplish home rule for municipalities, however. *See* M. DAUER, C. DONOVAN, & G. KRAMMER, SHOULD FLORIDA ADOPT THE PROPOSED 1968 CONSTITUTION? 33-36 (1968) (Public Administration Clearing Service of the University of Florida: Studies in Public Administration No. 31, 1968). For a general discussion of the concept of municipal home rule, *see* Vanlandingham, *Municipal Home Rule in the United States,* 10 WM. & MARY L. REV. 269 (1968).

29. It should be noted, however, that prior to the 1968 constitutional revision the legislature had chosen to grant limited *legislative* home rule to Florida cities. ("Although difficult to define, legislative home rule may be said to exist when the state

tion of this change did not occur until 1973, however.[30]

B. Sovereign Immunity

Analysis of the home rule provisions of the 1968 constitution notwithstanding, the question of state immunity to exercises of municipal power still remains. Accepting the elementary premise of the state's sovereign immunity, one seeking to deny such immunity must identify a waiver of the privilege.[31] The supreme court in *Temple Terrace* took for granted the *need to find an express* constitutional or statutory waiver with respect to municipal exercise of powers under *Article VII*, and the *existence of an implied* waiver with respect to exercise of *Article VIII*

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legislature, in the absence of constitutional provision, empowers municipalities to adopt and exercise home rule powers." Vanlandingham, *supra* note 27, at 273). This came about in 1915 when a general act on municipal charter amendment was passed. Chapter 6940, §§ 1-15, Laws of Florida (1915). The first section of the chapter limited the scope of municipal home rule to modification of local government structures, election procedures, and the mode of exercising existing powers:

> Every city . . . may . . . determine the manner in which its corporate powers shall be exercised, by amending its charter, or adopting a new charter, consistent with the constitution and the general laws of this state; or . . . consistent with . . . [applicable] special laws; provided, however, that this article shall not be so construed as to authorize any city . . . to enlarge its corporate powers beyond the limitations prescribed by law . . . .

Section 166.01, FLA. STAT. (1971).

30. The legislation referred to in note 29, *supra*, remained on the books after the adoption of the 1968 constitution until 1973 when the Municipal Home Rule Powers Act was passed (*see* notes 37-39 *infra*, and accompanying text) although in 1969 a new section appeared in Chapter 167, Florida Statutes, the general chapter on municipal powers:

> (1) In accordance with the provisions of § 2(b), Art. VIII of the state constitution, municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when prohibited by general or special law.
>
> (2) The provisions of this section shall be so construed as to secure for municipalities the broad exercise of home rule powers granted by the constitution.

Section 167.005, FLA. STAT. (1969). The result of including this provision at the beginning of a laundry list of enumerated municipal powers in Chapter 167 as well as leaving intact the very restrictive-sounding provision in § 166.01, recited *supra*, was understandable judicial confusion. *See* note 38 *infra*, especially, City of Miami Beach v. Fleetwood Hotel, Inc., 261 So. 2d 801 (Fla. 1972).

31. Buck v. McLean, 115 So. 2d 764, 768 (Fla. 1st D.C.A. 1959).

powers.[32] The court appeared to support this approach on the basis that a municipality's Article VIII general home rule powers flow directly from the constitution and are, therefore, self-executing,[33] whereas its Article VII taxing powers are mandatory or permissive, but not self-executing, therefore requiring legislative implementation.[34] "This constitutional delegation of municipal authority differentiates [the two]."[35] The necessary conclusion is that sovereign immunity is implicitly preserved by the constitution where there remains the opportunity, if desired, of legislative waiver, but is implicitly waived when not preserved in a constitutional provision granting self-executing powers.

3. LEGISLATIVE BASIS FOR EXTENSION OF THE *TEMPLE TERRACE* RULE: THE MUNICIPAL HOME RULE POWERS ACT OF 1973

In *Temple Terrace*, the supreme court pointed out that it was dealing with a power of municipalities (zoning) derived from the state constitution by way of the Municipal Home Rule Powers Act.[36] The court was referring to the 1973 revision of Florida Statutes[37] belatedly enacted by the legislature to reflect the reality of Article VIII, Section

32. 332 So. 2d at 612, as set forth in the text accompanying note 24 *supra.*

33. Home rule provisions are generally classified as self-executing, mandatory, and permissive. A self-executing provision . . . enables a city to adopt and exercise home rule powers immediately without the necessity of state implementing legislation. A mandatory provision . . . stipulates that the state legislature "shall" enact implementing legislation to provide for home rule adoption. A permissive provision . . . merely authorizes home rule and empowers the state legislatures to grant it at its discretion.

Vanlandingham, *supra* note 28, at 278 (footnotes in the original are omitted). That Article VIII, Section 2(b) is self-executing is by no means an incontestable conclusion. In fact, the supreme court did not expressly state in *Temple Terrace* that Article VIII, Section 2(b) is self-executing or that Article VII, Section 9(a) is mandatory or permissive only. However, that the court now accepts this principle is a logical inference to be drawn from its comparison of the two provisions. *But see* note 38 *infra.*

34. In pertinent part, Article VII, § 9(a) provides: "[M]unicipalities *shall* . . . be authorized by law to levy ad valorem taxes and *may be authorized* . . . to levy other taxes . . . except ad valorem taxes on intangible personal property and taxes prohibited by this constitution." (Emphasis added.) *Compare* Article VIII, § 2(b) as set forth in the text accompanying note 27 *supra.*

35. 332 So. 2d at 613.

36. *Id.* at 612-13.

37. Ch. 73-129, § 1, Laws of Fla.

2(b) of the 1968 Florida Constitution and to clear up judicial confusion over the meaning and intent of the constitutional revision.[38]

38. *Compare* City of Miami Beach v. Fleetwood Hotel, Inc., 261 So. 2d 801 (Fla. 1972) *with* City of Miami Beach v. Forte Towers, Inc., 305 So. 2d 764 (Fla. 1974).

> This is not the initial appearance of a rent control ordinance before this Court. We dealt with a prior rent control ordinance of the city in [*Fleetwood*]; there we affirmed a trial court order invalidating that ordinance. In so doing we stated that a municipality has no power to enact a rent control ordinance "absent a legislative enactment authorizing the exercise of such a power by a municipality" . . .
>
> [T]herefore, we must consider whether the municipality now has the power to enact such an ordinance; that is, whether the enactment of [the Municipal Home Rule Powers Act] after our decision in *Fleetwood Hotel* necessitates a change in the result there reached. I believe it does . . . .

Id. at 764-65 (Dekle, J., concurring specially).

In pertinent part, the Municipal Home Rule Powers Act (§§ 166.011-.411, Fla. Stat., 1977) provides:

> § 166.021 Powers.—
>
> (1) As provided in Section 2(b), Article VIII of the State Constitution, municipalities shall have the . . . powers to enable them to conduct municipal government, perform municipal function, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited from law.
>
> (2) "Municipal purpose" means any activity or power which may be exercised by the state or its political subdivisions.
>
> (3) The Legislature recognizes that pursuant to the grant of power set forth in § 2(b), Article VIII of the State Constitution, the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state Legislature may act, except:
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> (a) The subjects . . . which require general or special law pursuant to . . . the State Constitution;
>
> (b) Any subject expressly prohibited by the Constitution;
>
> (c) Any subject expressly preempted to state or county government by the Constitution or by general law; and
>
> (d) Any subject preempted to a county pursuant to a county charter adopted under the authority of . . . the state constitution;
>
> (4) The provisions of this section shall be so construed as to secure for municipalities the broad exercise of home rule powers granted by the Constitution . . . and to remove any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those . . . expressly prohibited.
>
> § 166.042 Legislative intent.—
>
> (1) It is the legislative intent that the repeal [of certain statutes pertaining to municipal powers] shall not be interpreted to limit or restrict the powers of municipal officials, but shall be interpreted as a recognition of constitutional powers. It is, further, the legislative intent to recognize residual constitutional home rule powers in municipal government, and the Legislature finds that this can best be accomplished by the removal of legislative direction from the statutes.

Prior to the passage of the 1973 act it was necessary to find legislative authorization to municipalities to legislate in the field of zoning, tree removal, and all other areas of municipal concern. This was true even during the period after the 1968 constitutional revision until passage of the Municipal Home Rule Powers Act, the broad language of Article VIII, Section 2(b) notwithstanding.[39] Under the act, however, a municipality may legislate with respect to almost any subject pursuant to Article VIII, Section 2(b).[40] This means that most powers exercisable by a municipality are Article VIII powers, as was the zoning power in *Temple Terrace*.[41]

Recalling the holding of the supreme court in *Temple Terrace* that sovereign immunity was no guide in a case dealing with the zoning power of municipalities "which is derived from Article VIII, § 2(b) of the Florida Constitution by way of the Municipal Home Rule Powers Act,"[42] the logical conclusion is that sovereign immunity would be inoperative, in the absence of preservative legislation, as to most of the powers exercisable by municipalities today. By further analogy to *Temple Terrace*, the duty of the state to seek compromise with municipal authorities where city regulations pose an obstacle to state action is clear, as is the necessity of using the balancing of interests test in judicial solution of unresolved state/local conflicts.

4. CONCLUSION

The foregoing analysis demonstrates the existing opportunity for Florida courts to recognize in an appropriate case the pre-eminence of municipal authorities vis-à-vis the state and its agencies where neither the state constitution nor the legislature has expressly provided sovereign immunity from local rules and regulations. It is nonetheless possible that courts will be reluctant to extend the *Temple Terrace* rule to

> It is, further, the legislative intent that municipalities shall continue to exercise all powers heretofore conferred on municipalities . . . but shall hereafter exercise those powers at their own discretion, subject only to the terms and conditions which they choose to prescribe.

39. *See* text accompanying notes 26-30 *supra*.

40. For those subjects on which a municipality may not legislate, see § 166.021(3), Fla. Stat. (1977) as set forth in note 38 *supra*. The municipal taxing power is not an Article VIII power, being specifically spoken to in Article VII.

41. *See* 332 So. 2d at 612.

42. *Id.* at 612-13.

non-zoning cases. Accordingly, it is proposed that the Florida Legislature amend the Municipal Home Rule Powers Act as follows:*

> An Act relating to the powers of municipalities; creating section 166.042(3), F.S., to provide a statement of legislative intent that the state, the counties, and their agencies must comply with, or obtain waivers of compliance with, municipal regulations in those municipalities in which they operate; providing the criterion to be judicially applied in deciding questions of wrongful denial of waiver.
>
> Be It Enacted by the Legislature of the State of Florida:
>
> 166.042 Legislative Intent.—
>
> (3)(a) It is the legislative intent that municipal ordinances and other regulations passed pursuant to s. 2(b), Art. VIII of the State Constitution and this Act shall be complied with by the state and counties and their agencies unless otherwise provided by general or special law, including county charters. This requirement may be fulfilled by applying for and receiving from the appropriate municipal authority a variance or other waiver of compliance.
>
> (b) In the event a state or county or an agency thereof is denied a requested variance or other waiver of compliance with a municipal ordinance or regulation, the state or county or agency thereof may seek judicial review in a court of competent jurisdiction, which court shall determine which governmental authority, on balance, possesses the greater interest in maintaining its course of action. Sovereign immunity shall not be inferred from any legislative grant of power in the absence of a specific provision for sovereign immunity.

The effects of this proposal would be to translate to legislative mandate the judicial rule in *Temple Terrace* beyond the limited application inferred by the circuit court in the Boca banyan tree case and to lend added significance to local ordinances evidencing the will of a local citizenry on important local issues which are not transcended by state necessity.

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* Editor's Note: The author's proposed legislation has been pre-filed for consideration in the 1979 session of the Florida Legislature as House Bill 531.